

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM BOYD,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 99-4987
v.	:	
	:	
DEPARTMENT OF CORRECTIONS,	:	
et al.,	:	
Defendants	:	

MEMORANDUM

BUCKWALTER, J.

August 2, 2000

Presently before the Court is the Defendants' Motion to Dismiss. For the reasons stated below, the Motion is Granted.

I. BACKGROUND

Plaintiff William Boyd ("Boyd") is currently an inmate at the State Correctional Institute at Graterford ("Graterford"). He was transferred to that institution on January 11, 1999. Upon arrival, Boyd was assigned into Administrative Custody ("AC") and placed in the Restricted Housing Unit ("RHU"). Boyd claims that the reasons for his not being assigned to the general prison population were never adequately explained to him. A Program Review Committee ("PRC") meeting was held on January 28, 1999 regarding his AC status. During this meeting, Boyd was informed that he would have to sign a "tracking agreement" in order to be released into the general prison population, but he refused to do so. Boyd filed an appeal of the PRC decision to Graterford Superintendent Donald Vaughn ("Vaughn") concerning his AC status on several dates during 1999, but Vaughn never responded to these complaints. Boyd also

appealed directly to Chief Hearing Examiner Robert Bitner, but these appeals were denied or ignored because of procedural difficulties. In July, 1999, Defendant Russell Smith explained to Boyd that he would not be released to the general population based on a security report. At a PRC hearing on September 2, 1999 the Plaintiff's request to see the report was denied, although he was told that it related to his history at other state correctional institutes. Plaintiff also claims that he requested to be transferred to a new cell, but his repeated requests were denied by various Defendants. Plaintiff was eventually assaulted and injured by his cellmate, Keith Clayborne.

The Plaintiff seeks relief under § 1983 for violations of his VIII and XIV Amendment rights. He also asserts that he was falsely imprisoned, denied access to the main law library and forced to do work he found "humiliating". The Plaintiff seeks compensatory damages of \$25,000, punitive damages of \$100,000. He also seeks the following prospective relief:

- (1) access to the report which formed the basis of his assignment to AC;
- (2) a release to the general population or transfer to a new facility; and
- (3) a warning to his fellow inmates not to retaliate against him.

II. LEGAL STANDARD

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia,

(3d Cir. 1989). The Defendants here also raise jurisdictional issues pursuant to Rule 12(b)(1). Such motions also require the court to accept plaintiff's allegations as true. See Mortensen v. First Federal Savings and Loan Association, 549 F.2d 884, 891 (3d Cir. 1977).

III. DISCUSSION

Defendants seek to dismiss Plaintiff's claims because Boyd has failed to exhaust his administrative remedies. Prisoners must exhaust all administrative remedies before initiating a lawsuit pursuant to 42 U.S.C. § 1983. 42 U.S.C. § 1997(e)¹; Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000). As the Third Circuit stated in Jenkins v. Morton,

[E]xhaustion promotes judicial efficiency in at least two ways. When an agency has the opportunity to correct its own errors, a judicial controversy may well be mooted, or at least piecemeal appeals may be avoided. And, even where a controversy survives administrative review, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration, especially in a complex or technical factual context" 148 F.3d 257, 259 (3d Cir. 1998), *quoting* McCarthy v. Madigan, 503 U.S. 140, 146 (1992).

Plaintiff has been incarcerated at Graterford since the treatment complained of arose, so the provisions of § 1997(e) apply to him. The Department of Corrections has adopted a Consolidated Inmate Grievance Review System.² As has been noted, the Department's inmate grievance system provides an adequate and meaningful legal remedy. See Waters v. Cmwlth, 509 A.2d 430, 433 (Pa. Cmwlth. 1986).

1. "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted".

2. The Department maintains a prisoner grievance system which allows prisoners to seek review of problems which they experience during their period of incarceration. While the system is designed to provide for review and resolution of prisoner grievances at the most decentralized level possible, the system also provides for a review of the initial decision making and for possible appeal to the Department's central office. Copies of the grievance system procedures are made available to every prisoner under the Department's jurisdiction. See 37 Pa.Code § 93.9

Boyd never alleges that he filed grievances concerning some of the relief he seeks in the Amended Complaint. There is no dispute that he never grieved the protection received, the denial of access to the main law library or the refusal to provide the report which served as a basis for his assignment to RHU. Boyd does allege that he filed several appeals of his AC confinement in the RHU, but they were either denied or ignored. However, this was not part of the grievance procedure as required provided by DC-ADM-804. Boyd recognizes this, but essentially argues that attempting such a grievance would have been futile, considering the lack of attention his appeals had produced. However, futility does not excuse the exhaustion requirements under the Prison Litigation Reform Act (“PLRA”). See Nyhuis, 204 F.3d at 71. The PLRA requires an inmate to exhaust all administrative remedies prior to bringing a federal action challenging prison conditions, whether or not they provide the inmate with the relief the inmate says he or she desires in the federal action. Id. Therefore, since the Plaintiff has not alleged that he had pursued his administrative remedies to final review, his Amended Complaint will be dismissed.

Boyd can pursue his administrative remedies at SCI-Graterford. If he is not satisfied with the result of such procedures, he may then refile a complaint in federal court. However, if Boyd’s administrative remedies are now time-barred, the judgment of the Court will not be affected. It would be contrary to Congress’s intent in enacting the PLRA to allow inmates to bypass the exhaustion requirement by declining to file administrative complaints and then claiming that administrative remedies are time-barred and thus not then available. See Wright v. Morris, 111 F.3d 414, 417 (6th Cir. 1997); Marsh v. Jones, 53 F.3d 707 (5th Cir. 1995) (District

Court could dismiss prisoner's 1983 claims under § 1997(e) even when administrative relief is time-barred).

IV. CONCLUSION

The Plaintiff has failed to allege exhaustion of administrative remedies as required under § 1997(e). Therefore, the Amended Complaint is dismissed with prejudice.

An appropriate order follows.

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ORDER

AND NOW, this 2nd day of August, 2000, upon consideration of the Defendants' Motion to Dismiss (Docket No. 22), and the Plaintiff's Response thereto (Docket No. 30); it is hereby **ORDERED** that the Motion is **GRANTED**.

This case is marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.